U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-R-, INC.

DATE: JUNE 8, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a contract rehabilitation service provider, seeks to classify the Beneficiary, a physical therapist, as a member of the professions holding an advanced degree who is employed in a Schedule A, Group I occupation. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2); section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i); 20 C.F.R. § 656.5(a). For Schedule A occupations, the U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified, and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of foreign nationals. 20 C.F.R. § 656.5. Only professional nurses and physical therapists are on the current list of Schedule A, Group I occupations. 20 C.F.R. § 656.5(a).

The Director, Nebraska Service Center, denied the petition. The Director concluded that the Petitioner did not comply with the notice of filing requirements.

The matter is now before us on appeal. In its appeal, the Petitioner argues that the Director's application of the notice of filing requirements was incorrect.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA Form 9089, Application for Alien Employment Certification, from DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition, including an uncertified ETA Form 9089 in duplicate, is filed directly with USCIS. 8 C.F.R. § 204.5(a)(2) and (k)(4); *see also* 20 C.F.R. § 656.15.

The regulation at 20 C.F.R. § 656.15 provides, in pertinent part:

> (b) *General documentation requirements.* A Schedule A application must include:
>
> (1) An Application for Permanent Employment Certification form, which includes a prevailing wage determination in accordance with § 656.40 and § 656.41.
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> (2) Evidence that notice of filing the Application for Permanent Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in § 656.10(d).

The regulation at 20 C.F.R. § 656.10(d)(1) states that notice of the filing must be provided:

> (i) To the bargaining representative(s) (if any) of the employer's employees in the occupational classification for which certification of the job opportunity is sought in the employer's location(s) in the area of intended employment. Documentation may consist of a copy of the letter and a copy of the Application for Permanent Employment Certification form that was sent to the bargaining representative.
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> (ii) If there is no such bargaining representative, by posted notice to the employer's employees at the facility or location of the employment. The notice must be posted for at least 10 consecutive business days. The notice must be clearly visible and unobstructed while posted and must be posted in conspicuous places where the employer's U.S. workers can readily read the posted notice on their way to or from their place of employment . . . In addition, the employer must publish the notice in any and all in-house media, whether electronic or printed, in accordance with the normal procedures used for the recruitment of similar positions in the employer's organization.

According to the regulation at 20 C.F.R. § 656.10(d)(3)(iv), notice must "[b]e provided between 30 and 180 days before filing the application." Finally, the regulation at 20 C.F.R. § 656.10(d)(6) states that "[i]f an application is filed under the Schedule A procedures at § 656.15 . . . the notice . . . must meet the requirements of this section."

II. ANALYSIS

The sole issue on appeal is whether the Petitioner met the notice of filing requirements described above. The notice, which was signed by the Petitioner, indicates that it was posted at the location of the employment from September 4, 2014, to September 18, 2014, and the petition was filed on October 9, 2014. The Director concluded that the Petitioner did not provide the notice of filing "between 30 and 180 days before filing the application," as required by the regulation at 20 C.F.R. § 656.10(d)(3)(iv). The Director also found that the Petitioner did not submit any "documentary

evidence or employer attestation concerning the publication of the notice in any in-house media as required under 20 C.F.R. [§] 656.10(d)(1)(ii)."

On appeal, the Petitioner states that "USCIS failed to follow the regulations under 20 C.F.R. § 656.15 as it applies to the submission of documentation under the labor certification requirement for an occupation listed on Schedule A." The Petitioner does not, however, cite any statutory or regulatory provision which would allow us to waive the corresponding notice of filing requirements at 20 C.F.R. § 656.10(d).

We agree with the Director's findings. Specifically, the Petitioner did not post the notice of filing for 10 consecutive days within the time period specified in the regulation, nor did it demonstrate whether it published the notice in-house per its normal recruitment procedures.

III. CONCLUSION

The Petitioner has not established that it complied with the relevant notice of filing requirements for a Schedule A occupation.

We will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of S-R-, INC.*, ID# 16826 (AAO June 8, 2016)